

DISTRICT COURT, LAS ANIMAS COUNTY, COLORADO 200 East 1st Street, Room 304 Trinidad, Colorado 81082 Telephone: 719.846.3316	<div style="text-align: center; padding-top: 100px;"> ▲ COURT USE ONLY ▲ </div>
Plaintiff: PIONEER NATURAL RESOURCES USA, INC., a Delaware corporation, v. Defendant: PATRICK J. PFALTZGRAFF, in his official capacity as the Division Director of the Colorado Water Quality Control Division of the Colorado Department of Public Health and Environment.	
Attorneys for Plaintiff: Ronda L. Sandquist, Colo. Atty. Reg. No. 9944 Christopher O. Murray, Colo. Atty. Reg. No. 39340 Patrick B. Hall, Colo. Atty. Reg. No. 45317 BROWNSTEIN HYATT FARBER SCHRECK, LLP 410 Seventeenth Street, Suite 2200 Denver, Colorado 80202-4432 Telephone: 303.223.1100 E-mails: rsandquist@bhfs.com, cmurray@bhfs.com, phall@bhfs.com	Case Number: Division:
COMPLAINT FOR JUDICIAL REVIEW	

Plaintiff, Pioneer Natural Resources USA, Inc., by and through its attorneys, Brownstein Hyatt Farber Schreck, LLP, hereby submits its Complaint as follows:

Summary of the Case

1. Pioneer Natural Resources USA, Inc. (“Pioneer”) seeks relief from a final order of the Colorado Water Quality Control Division of the Colorado Department of Public Health and Environment (the “Division”) denying Pioneer’s request for a stay of the deadlines associated with certain contested permit terms. In December 2013 and August 2014, Pioneer applied for modifications to three water-quality parameters in the company’s permits to discharge produced water from hundreds of coalbed methane wells in the Raton Basin, a large, underground geological formation in southern Colorado and northern New Mexico. The Division

incorporated the modification requests into the permits' renewal process, and on February 6, 2015, denied all three requests. Pioneer administratively appealed the modification denials and sought a stay of the contested parameters' compliance deadlines, which the Division denied. Because Pioneer would be forced to permanently shut down its permitted operations if the challenged permit terms are not stayed, costing Pioneer and the local community many millions of dollars, Plaintiffs bring this petition for judicial review to reverse the Division's denial of stay and to obtain preliminary and permanent injunctive relief.

Parties

2. Pioneer is a Delaware corporation with its principal place of business located at 5205 North O'Connor Boulevard, Suite 200, Irving, Texas 75039. Pioneer is an independent oil and natural gas company that conducts significant coalbed methane operations in Las Animas County.

3. Defendant Patrick J. Pfaltzgraff is the Division Director of the Division, which has a principal place of business at 4300 Cherry Creek Drive South, Denver, Colorado 80246. The Division is a State agency within the Colorado Department of Public Health and Environment.

Jurisdiction and Venue

4. The Court has jurisdiction over this matter pursuant to Colorado Revised Statutes sections 24-4-106, 25-8-404, and 25-8-406, as it seeks review of a final order denying a request for stay.

5. Venue is appropriate pursuant to Colorado Revised Statutes section 25-8-404(2) and Colorado Rule of Civil Procedure 98, as the affected discharge sources are located in Las Animas County.

Standard of Review

6. Under Colorado Revised Statutes section 25-8-406 and 5 C.C.R. § 1002-61.7(1), the Court's review of the Division's denial of Pioneer's request for stay is *de novo*.

Status of the Permits

7. Pioneer holds discharge permits CO-0047767 (the "47767 Permit"), CO-047776 (the "47776 Permit"), and CO-0048003 (the "48003 Permit") (collectively, the "Permits"), by which the Division authorizes and regulates the discharge of water from Pioneer's coalbed methane wells in the Raton Basin. Pioneer currently operates over 500 wells associated with surface discharge outfalls; the Permits apply to approximately 50 "outfalls," the term of art for a point of water discharge. Most outfalls discharge water from more than one well.

8. The Division issued the individual Permits on December 30, 2009, effective February 1, 2010. The Permits were set to expire on January 31, 2015.

9. In the normal course of business, a permittee would submit a renewal application six months prior to the permit's expiration in accordance with C.C.R. § 1002-61.4(1)(D). In this case, however, the Division requested that Pioneer submit its renewal applications over six months early, which it did on December 23, 2013.

10. Despite Pioneer's early submission in compliance with the Division's request, the Division did not issue draft renewal Permits until February 6, 2015, after the Permits technically expired. The Colorado Water Quality Act's regulations, 5 C.C.R. § 1002, provide that the requirements of the original permits remain in full force and effect until the renewal permits are finalized. *See* 5 C.C.R. § 1002-61.8(3)(o). As a result, the original Permits are currently "administratively extended" until the renewal permits are issued.

Pioneer's Coalbed Methane Operations

11. Pioneer operates over 2,000 coalbed methane wells located primarily on upgradient tributaries to the Purgatoire River. Coalbed methane ("CBM") lies in deep underground seams that also hold water. Pioneer's operations bring this mixture to the surface, separate the methane, and release the produced water at the outfalls.

12. Pioneer's CBM wells produce approximately 4,500 acre feet of water per year, some of which is injected back into the ground, but the majority of which—up to 2,700 acre feet per year (or 2.4 million gallons per day)—is discharged to the arid Purgatoire/Arkansas River basin.

13. This produced water is anything but waste. It is used for crop irrigation, livestock watering, and wildlife habitat. Indeed, there are ranchers whose operations depend on Pioneer's produced water. The water is so important that many local government officials, business owners and community members in the Raton Basin have submitted letters in support of Pioneer's renewal permits. *See, e.g.,* Letter from Concerned Citizens of Las Animas County, March 30, 2015, attached as Ex. 1; E-mail from Bobby Hill to Lori Mulsoff re Raton Basin Water and Water Quality, Apr. 6, 2015, attached as Ex. 2; E-mail from Hill Ranch to Janet Kieler re Raton Basin Water and Water Quality, Apr. 6, 2015, attached as Ex. 3; E-mail from Christi Jones to Lori Mulsoff re CPDHE Permit for Raton Basin, Apr. 8, 2015, attached as Ex. 4; Letter from Las Animas County Board of County Commissioners to the Division re Draft Surface Water Permits, Apr. 2, 2015, attached as Ex. 5; Letter from James Vigil to Lori Mulsoff re Draft Surface Discharge Permits, Apr. 2, 2015, attached as Ex. 6. Other public comments may be found at <https://www.colorado.gov/pacific/cdphe/cdphe/wq-public-notice-actions>.

14. Accordingly, since Pioneer (including its predecessors in interest) began CBM discharge operations in the Raton Basin over fifteen years ago, the Purgatoire River has met water quality standards.

The Division Imposes New Restrictive Limits

15. Notwithstanding the factual evidence of good and usable water in the Purgatoire River, beginning in 2013, the Division developed a permit approach providing for new, restrictive discharge limitations on Pioneer's CBM-produced water. Three of these discharge limitations are pertinent to this appeal.

16. The first is whole effluent toxicity ("WET"), which is a laboratory test used to assess the possible aggregate toxic effect of effluent to aquatic organisms. As opposed to evaluating the effect of a specific constituent of the discharged water (the "effluent"), WET testing looks at the toxicity of the effluent as a whole to aquatic species. There are two types of WET testing: acute and chronic. Acute toxicity tests are used to determine the concentration of effluent or ambient (pre-existing) water that results in mortality within a group of test organisms during a 24-, 48- or 96-hour exposure. A chronic toxicity test is a longer-term test in which sublethal effects, such as fertilization, growth or reproduction, are measured in addition to lethality. Traditionally, chronic tests are conducted to allow an evaluation of these effects over the test organisms' full life-cycles or significant portions of those test organisms' life cycles (approximately 30 days).

17. The second effluent limitation at issue is iron. The iron standard of 1.0 milligrams per liter was set as an aquatic life contaminant limit.

18. The third limitation is referred to as "EC/SAR." Electrical Conductivity ("EC") is a measure of the amount of dissolved solids (salts) in water. As the EC in soil water increases, the sodium can decrease plant growth, making EC an important measure for irrigation water. Similarly, Sodium Absorption Ratio ("SAR") is a measure of the abundance of sodium relative to the abundance of calcium and magnesium. SAR is also an agricultural concern, as the ratio relates to the amount of sodium that is available for absorption by soils, which impacts soil structure and moisture. These parameters are often referenced together as "EC/SAR."

19. In Division-issued permits, parameters such as these may have an associated "compliance schedule," a timeline for ultimately bringing an outfall into compliance with the parameter, which is known as the "compliance period."

Pioneer's WET, Iron, and EC/SAR Modification Requests

20. In December 2013, Pioneer submitted permit modification requests related to the Permits' WET testing approach and iron limitations.

21. During the compliance period, Pioneer recognized that it would have difficulty meeting the chronic WET testing approach required by the Permits. (It has met the acute test for many years.) When measured at the outfall, some of the outfalls could not comply with the required chronic WET testing, which used a species of water flea, *Ceriodaphnia dubia* ("C. dubia") as the test organism. This nonattainment arose, in part, because of *C. dubia*'s particular sensitivity to total dissolved solids ("TDS"). Following guidance from the U.S. Environmental

Protection Agency (“EPA”), and after an extensive study, Pioneer proposed a revised, two-part WET testing approach for the 47776 and 48003 Permits. First, Pioneer proposed acute WET testing at all outfalls using *Daphnia magna*, a different species of water flea less susceptible to TDS toxicity but still sensitive to other sources of toxicity and more representative of the aquatic species in the affected areas.¹ Second, to assure that no toxicities other than TDS were affecting aquatic species, there would be chronic WET testing using *C. dubia* at the confluences with the Purgatoire River, where aquatic communities occur. Pioneer also requested a WET testing compliance schedule that would extend the date for chronic WET testing compliance to December 31, 2016.

22. In response to difficulties with the existing iron limitation, Pioneer proposed that the Division authorize an iron trading program that would require two times the reduction in the background sources of iron in the Purgatoire River for one credit to offset Pioneer’s discharges. As detailed in a comprehensive report submitted in support of the proposal, Pioneer noted that, because streambank erosion is a substantial source of iron in the Purgatoire, implementing streambank stabilization projects along the Purgatoire River would reduce overall iron levels. The modification request cited additional benefits of the proposed iron trading program, including reducing total suspended sediment and improving the aquatic habitat of the Purgatoire. Noting that September is the best month for constructing streambank stabilization projects, Pioneer requested the Division’s timely review to enable Pioneer to begin the projects in September 2014. Pioneer also requested a compliance schedule that would extend the date for iron compliance to December 31, 2016.

23. The Division first addressed Pioneer’s iron and WET modification requests in a draft Fact Sheet dated June 9, 2014. (A Fact Sheet is a document that explains, in narrative form, the reasoning behind the Division’s decisions.)

24. Although acknowledging that Pioneer’s modification requests encompassed substantive proposals beyond compliance schedule requests, the Division stated that it limited its review to the requests for compliance schedules, which it proposed to extend from October 1, 2014 to April 1, 2015.

25. In support of this decision, the Division stated:

The renewal permits for Pioneer are currently in the process of being drafted and are anticipated to be at public notice during, or before, August 2014. **These permits expire January 31, 2015, and an August 2014 public notice (or before) is expected to result in effective permits at, or prior to, the permit expiration.** Thus, a complete evaluation of the above-mentioned modification requests in addition to an imminent permit renewal as part of the Arkansas Basin ‘Watershed Approach’ is redundant and inefficient. **This permit modification was determined to be necessary to extend compliance dates for boron, total recoverable iron, and WET since those effluent limits are currently**

¹ Some outfalls were already subject to acute WET testing using *Daphnia Magna*.

scheduled to become effective on October 1, 2014, and with public notice expected on or before August 2014, it is reasonable to expect that the renewal process will not be complete by that date.

(emphasis added).

26. In other words, the Division did not issue a final order or determination regarding Pioneer's WET and iron modification requests, choosing instead to roll those requests into the renewal permit process. To explain this decision, the Division represented that it would issue final renewal permits on or before January 31, 2015.

27. Following public notice, in a final Fact Sheet dated July 30, 2014, the Division extended Pioneer's iron and WET compliance deadlines from April 1, 2015 to July 1, 2015.

28. At this time, based on the Division's course of action and its representations that it would issue renewal permits prior to the extended compliance deadlines, Pioneer had no substantive decision on its modification requests that it could appeal, and no reason to seek a stay of the July 1, 2015 deadline.

29. On August 7, 2014, Pioneer submitted a request for a compliance schedule in connection with the EC/SAR limitations in all three of the Permits. Pioneer stated that it was experiencing difficulty complying with the EC/SAR values that became effective on April 1, 2014 as the result of a February 28, 2014 modification. The February 28, 2014 modification changed the EC/SAR limitations, established flow limits for each outfall, and increased the frequency of required EC/SAR sampling from quarterly to monthly. Pioneer proposed that the Division institute a 24-month "report-only" compliance schedule that would allow Pioneer additional time to gather data to support revised limits and to assess how to comply with those limits.

30. As with WET and iron, the Division never issued a final decision addressing Pioneer's August 7, 2014 EC/SAR modification request, but instead rolled its consideration of the request into the renewal permit process. Because of this, Pioneer never received a substantive decision on its modification requests that it could appeal, and at the time, had no reason to seek a stay of the enforcement of the EC/SAR limitations.

The Division Issues Draft Renewal Permits and Fact Sheets, and Pioneer Appeals

31. In draft renewal Permits and Fact Sheets issued on February 6, 2015, the Division denied Pioneer's WET testing and iron trading proposals, as well as its request for an EC/SAR compliance schedule.

32. Pioneer appealed these decisions to the Division on March 9, 2015, within the 30-day deadline for administrative appeals set forth in the WQCA regulations.

33. In conjunction with its appeal, Pioneer requested a stay under Colorado Revised Statutes section 25-8-406 and 5 C.C.R. § 1002-61.7, which allow the Division to stay any contested terms and conditions of a permit for good cause shown. A true and correct copy of “Petitioner’s Notice of Appeal, Request for Adjudicatory Hearing, and Request for Stay” is attached as Exhibit 7.

34. In particular, Pioneer requested that the Division stay its

(1) adoption, implementation, and enforcement of the challenged EC/SAR limitations currently in effect; (2) adoption, implementation, and enforcement of the WET testing approach and iron limitations in the current permit, which become effective July 1, 2015; and (3) adoption, implementation, and enforcement of the provisions of pending draft Permits related to WET, iron, and EC/SAR, should those provisions become final during the pendency of this appeal.

35. Pioneer asserted that good cause for a stay existed for several reasons. First and foremost, Pioneer explained, enforcement of the challenged requirements and limitations would cause severe harm to Pioneer. Pioneer’s testing showed that the WET testing approach and iron and EC/SAR limitations risk Pioneer’s compliance with the permit terms and conditions, opening Pioneer up to EPA enforcement actions, citizen suits, and the accompanying costs of fines, damages, and attorneys’ fees. Such enforcement actions and citizen suits would threaten Pioneer’s hard-earned goodwill and reputation, a harm that cannot be undone. The alternative to noncompliance and irreversible reputational harm would be shutting down Pioneer’s CBM operations. Pioneer also noted that it did not ask for a stay of its monitoring obligation.

The Division’s Denial of Pioneer’s Request for Stay

36. The Division denied Pioneer’s request for adjudicatory hearing and request for stay in an order dated March 19, 2015. A true and correct copy of the Division’s “Order Denying Notice of Appeal, Request for Adjudicatory Hearing, and Request for Stay” (the “Denial Order”) is attached as Exhibit 8.

37. As to merits of Pioneer’s challenge, the Division asserted that its decisions regarding Pioneer’s WET, iron, and EC/SAR modification requests were “preliminary and still available for public comment,” and therefore not “final order[s] or determination[s].”

38. The Division found that, “[t]o the extent applicable, sections 61.7(a) and (b), 5 CCR 10020-61, require a permittee to request a stay ‘within thirty (30) days of the issuance of the final [renewal] permit [or final permit modification, pursuant to the cross reference in section 61.8(8)(e)].’” The Division then addressed each of Pioneer’s particular requests for stay:

- a. Regarding Pioneer’s first request for stay—adoption, implementation, and enforcement of the challenged EC/SAR limitations currently in effect—the Division stated that “the time to appeal and request a stay for these

effluent limitations has passed. The Division made its final determination about Pioneer's current EC/SAR limitations on February 28, 2014. Pioneer did not appeal and request a stay within thirty days, and therefore failed to exhaust its administrative remedies." Denial Order at ¶ 27.

- b. Regarding Pioneer's second request for stay—adoption, implementation, and enforcement of the WET testing approach and iron limitations in the current permit, which become effective July 1, 2015—the Division stated that "the time to appeal these effluent limitations has passed. The Division made its final determination about the Pioneer's current WET testing approach on July 31, 2014. Pioneer did not appeal and request a stay within thirty days, and therefore failed to exhaust its administrative remedies." Denial Order at ¶ 28.
- c. Regarding Pioneer's third request for stay—adoption, implementation, and enforcement of the provisions of pending draft Permits related to WET, iron, and EC/SAR, should those provisions become final during the pendency of Pioneer's appeal—the Division stated that "the time to appeal these permit terms has not started. Section 61.7(1)(a) and (b) both provide that the time to appeal and request a stay is within thirty days of issuance of the final renewal." Denial Order at ¶ 29.

39. In sum, the Division responded to Pioneer's requests for modification of the current permits by refusing to consider those requests and instead forcing Pioneer to accept the renewal permitting process as the only vehicle for consideration of its need to extend compliance deadlines for WET, iron and EC/SAR. The Division then held in the Denial Order that because this renewal permitting process is still not finished, Pioneer cannot obtain any relief from these compliance deadlines.

Post-Appeal Discussions

40. Following the Division's issuance of the Denial Order, Pioneer's representatives engaged with the Division regarding the possibility of entering a facilitated discussion to address Pioneer's permit concerns in a non-adversarial setting.

41. Contemporaneously, Pioneer sought an agreement regarding its request for stay, which would create a pressure-free period of time in which the parties could negotiate permit terms. To address the Division's reasoning behind its denial of Pioneer's initial request for stay of the July 1, 2015 deadlines—that the time to request a stay had passed—Pioneer suggested that the Division modify the administratively extended permits to change this deadline.

42. On April 1, 2015, the Division e-mailed Pioneer the terms on which the Division would participate in such a discussion (the "April 1st E-mail"). A true and correct copy of the April 1st E-mail is attached as Exhibit 9.

43. In the April 1st E-mail, the Division once again rejected Pioneer's request for a stay. The Division first reiterated the basis for denial stated in the Denial Order:

[T]he Division does not have the authority to stay XTO's and Pioneer's current permit terms because the deadline to request a stay has passed. The Division's authority to issue a stay is limited to respond to requests for stays that are made within the statutory timeframe after final action by the Division. In this case the request is either well beyond that statutory timeframe for prior permit actions, or before final agency action on the current draft renewal permits.

44. The Division also articulated a new basis for the denial of Pioneer's request to modify the July 1, 2015 deadline in the administratively extended Permits:

Additionally, the Division will not modify the administratively extended permits, which will result in the compliance schedules expiring and the underlying limits becoming effective in July. The Division understands that [Pioneer is] concerned about [its] ability to meet the terms and conditions in the current permits beginning in July. For this reason we recognize the need to move quickly to schedule and complete the facilitated discussion. **We also recognize that having new permits in place by July may still be difficult.** We believe there may be an option that may be available that we could pursue should we find that additional time is needed to issue the final permits. We can explore that option with you at the appropriate time.

(emphasis added).

45. That is, while the Division refused to stay the July 1, 2015 deadlines, it admitted that the draft permit process would likely not be completed by that time. Put simply, the Division has essentially mandated that Pioneer experience noncompliance.

46. Pioneer responded to the Division in a letter from Ronda Sandquist to Emily Jackson and Peter Pfaltzgraff on April 8. A true and correct copy of that letter is attached as Exhibit 10. In that letter Pioneer explained that the Division had authority to extend the compliance deadlines for WET, iron and EC/SAR under the current permits and that by doing so the Division would obviate the need for Pioneer to seek judicial review of the Division's denial of stay.

47. Unable to rely on the Division's offer of enforcement discretion—which would not, at any rate, protect Pioneer from enforcement by EPA or citizen suits—Pioneer brings the present action to reverse the Division's denial of stay and enjoin the (1) adoption, implementation, and enforcement of the WET testing approach and iron limitations in the current permit, which become effective July 1, 2015; and (2) the adoption, implementation, and enforcement of the challenged EC/SAR limitations currently in effect.

**Pioneer and Those that Rely on Pioneer's Produced Water Will Be
Irreparably Harmed Absent a Stay**

48. Should the challenged WET testing approach, iron limitations, and EC/SAR limitations in the current Permits take effect or continue in effect, the harm to Pioneer and those that rely on Pioneer's CBM-produced water will be severe and irreparable.

49. First, as explained in Pioneer's administrative appeal, the adoption, implementation, and enforcement of the challenged limits would devastate Pioneer's CBM operations in the Raton Basin.

50. Pioneer's company policy is to cease the operation of outfalls that do not comply with regulatory requirements. As Pioneer's studies have indicated, however, Pioneer will likely not be able to comply with the WET testing approach and iron limitations that will take effect on July 1, 2015, and it is already experiencing random, minor exceedances of EC/SAR.

51. Thus, in light of Pioneer's company policy, if the Division enforces the existing WET testing approach, iron limitations, and EC/SAR limitations, Pioneer will be forced to begin injecting the produced water, a costly process that would waste thousands of acre feet of much-needed water, or shut down the permitted CBM wells altogether.

52. Pioneer estimates that the cost to inject the produce water would be millions of dollars for Pioneer and XTO Energy, Inc. ("XTO"), the other CBM producer in the area.

53. The only other alternative is shutting down the wells, a process that is both expensive and potentially irreversible. Stopping and starting a well is not like simply turning a tap off and on. Rather, shutting down Pioneer's noncompliant outfalls and their associated wells is a laborious process that would cost millions of dollars. What is more, once shut down, starting the wells up again would cost many millions more, an expense that might not be economically viable. Leaving the possibly unattainable limitations in effect is the equivalent of a mandatory injunction against Pioneer's Raton Basin operations.

54. Even if Pioneer were to disregard its company policy (which it will not), the potential harm to Pioneer caused by operating noncompliant discharge sources is severe. For one, Pioneer would be open to EPA enforcement actions and citizen suits seeking fines, damages, or injunctive relief. Given Pioneer already anticipates that compliance with the challenged limitations will be difficult, defending such suits would be costly and possibly futile.

55. Additionally, operating noncompliant outfalls would destroy the hard-earned goodwill that Pioneer has spent nearly two decades establishing in the communities surrounding its CBM operations. Operating noncompliant outfalls would also tarnish Pioneer's national reputation as a responsible steward of the environment, another harm that might never be reversed.

56. Not only would the adoption, implementation, and enforcement of the challenged limitations harm Pioneer, but it would also harm those that have come to rely on Pioneer's CBM-produced water. As noted, Pioneer's operations contribute nearly 2,700 acre feet per year to the Purgatoire/Arkansas River basin, which has experienced drought conditions for years. Because of the shortage of water in the area, there are ranches that depend almost exclusively on Pioneer's produced water. Forcing Pioneer to shutter its operations would cause these ranchers extreme hardship, possibly even forcing them off their land.

57. Pioneer estimates that CBM operations in Las Animas County (including those of XTO) could continue for another 20 to 40 years, providing many jobs and economic benefits to the local communities in excess of \$85 million per year. If Pioneer were forced to cease its operations, these jobs would disappear and a large portion of those economic benefits would evaporate.

58. On the other hand, granting Pioneer a temporary reprieve from the challenged limitations while the permit process and facilitated discussions unfold would cause minimal, if any, harm. Years of data show that Pioneer's water is good and usable, and that the Purgatoire River is clean and healthy. In other words, there would be little, if any, real-world harm to the environment from allowing Pioneer to continue its operations until the challenged limitations are finalized.

First Claim for Relief
(Reversal of the Division's Denial of Pioneer's Request for Stay Under C.R.S. §§ 24-4-106, 25-8-404, and 25-8-406)

59. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 58 above.

60. Under Colorado Revised Statutes section 25-8-406, the Division may stay any contested terms and conditions of a permit for good cause shown.

61. Action by the Division denying a stay is a final agency action subject to *de novo* determination pursuant to Colorado Revised Statutes section 25-8-404.

62. The Division's denial of Pioneer's request for stay should be reversed, as Pioneer demonstrated good cause in the form of at least (a) being forced to inject the produced water or shut down the wells, both at a cost of millions of dollars; (b) if the wells are shut down, the cost of restarting the wells, if doing so is even economically viable; (c) the harm to Pioneer's goodwill and reputation if Pioneer were forced to operate noncompliant outfalls (which it will not); (d) the potential for citizen suits and enforcement actions if Pioneer were to operate noncompliant outfalls; and (e) the harm to the community, including the loss of economic benefits, jobs, and usable water.

63. Additionally, the Division should be equitably estopped from denying Pioneer's request for stay on the basis that it is too late, as the division expressly represented in its July 31,

2014 Fact Sheets that final renewal permits would issue on or before January 31, 2015, well before the July 1, 2015 expiration of the WET and iron compliance schedules. The Division further represented that the very purpose for the July 1, 2015 expiration date was to ensure that renewal permits would be in place before that date was reached. The Division now admits that this is unlikely to be the case.

64. Pioneer reasonably relied on the representations of the Division. The representations were made in an official Division-issued Fact Sheet signed by Lori Mulsoff of the Division's Environmental Permits Section. They were also not optional—the Division flatly refused to consider modifications of the Permits, and instead “punted” the issue to the renewal permit process.

65. As demonstrated by the allegations in this Complaint, manifest injustice will result if the Division is not estopped on the basis of these representations. Pioneer will have been stripped of its right to any process regarding the WET, iron, and EC/SAR compliance deadlines and will be forced into noncompliance.

Relief Requested

66. Pioneer requests the following relief in the form of a judgment in favor of Pioneer and against the Division:

- a. A reversal of the Division's denial of Pioneer's March 9, 2015 request for stay;
- b. A preliminary and permanent injunction staying the adoption, implementation, and enforcement of the challenged WET testing approach, iron limitations, and EC/SAR limitations under the Permits until they are finalized and Pioneer's administrative and judicial appeal remedies are exhausted;
- c. Costs and fees; and
- d. Any further relief the Court may deem just and proper.

Dated April 20, 2015.

BROWNSTEIN HYATT FARBER SCHRECK, LLP

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